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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

ORIGINAL

In re Applications of)	MM Docket No. 92-253
)	
BAKCOR BROADCASTING, INC., DEBTOR)	File No. BRH-900330VV
c/o DENNIS ELAM, TRUSTEE)	
)	
For Renewal of License of)	
Station KLIK(FM))	
Lubbock, Texas)	
)	
SOUTHWEST EDUCATIONAL MEDIA)	File No. BPED-900629MK
FOUNDATION OF TEXAS, INC.)	
)	
For Construction Permit for a New)	
FM Station on Channel 229C1)	
Lubbock, Texas)	
To: Honorable Walter C. Miller		
Administrative Law Judge		

OPPOSITION TO PETITION FOR LEAVE TO AMEND

Bakcor Broadcasting, Inc., Debtor c/o Dennis Elam, Trustee ("Bakcor") hereby opposes the Petition for Leave to Amend filed by Southwest Educational Media Foundation of Texas, Inc. ("SEMFOT") on or about December 7, 1992, seeking to remove T. Kent Atkins as one of the principals of the applicant. The Petition for Leave to Amend should be summarily denied because SEMFOT has not met any of the good cause requirements as set forth in Erwin O'Conner Broadcasting Co., 18 RR 2d 820 (1970).

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Furthermore, the amendment constitutes a blatant attempt to remove from this proceeding a party whose character is currently under review by the Commission's staff.

1. In less than 30 days, SEMFOT has filed three petitions for leave to amend in an attempt to remove T. Kent Atkins as an officer and director of SEMFOT. The first petition, which proposed to replace Mr. Atkins with another person and to substitute a new entity as the applicant, was devoid of any explanation for the proposed changes. Both Bakcor and the Bureau opposed the petition. On November 27, 1992, the Presiding Judge denied the petition for leave to amend for failure to meet any of the good cause requirements set forth in Erwin O'Connor Broadcasting Co., supra. See Memorandum Opinion and Order, FCC 92M-1060, released November 27, 1992.

2. SEMFOT filed its second petition for leave to amend on the same day that the Presiding Judge released his MO&O denying the first petition. The second petition sought to accomplish the same objective as the first petition: substitute another person for Mr. Atkins and a new entity for SEMFOT. The only difference between the two petitions was SEMFOT's belated attempt to answer the objections of Bakcor and the Bureau and argue that the amendment met the Erwin O'Connor good cause test. On December 3, 1992, the Presiding Judge denied that petition as being redundant and summarily dismissed it with prejudice. See

Memorandum Opinion and Order, FCC 92M-1068, released December 3, 1992.

3. SEMFOT apparently subscribes to the old adage that the third time is the charm because a third petition for leave to amend was filed on or about December 7, 1992. SEMFOT has now abandoned its attempt to substitute a new entity as the applicant but continues to press for approval to have Mr. Atkins removed as an officer and director of SEMFOT. And yet, as described in Bakcor's opposition to the amendment as originally filed, it is Mr. Atkins who has been the moving force behind SEMFOT. In the application filed over two years ago, T. Kent Atkins is named as the President and Director of SEMFOT. He prepared and signed the engineering and also signed the certification to the application. He has actively participated in the bankruptcy proceeding involving Bakcor and in discussions concerning his potential acquisition of KKIK(FM). Now, two years later, SEMFOT is seeking to remove Mr. Atkins. While SEMFOT recites the good cause requirements for a post-designation amendment, it fails to meet any one of them.

4. In order to establish good cause for acceptance of a post-designation amendment, an applicant must demonstrate that: (1) it acted with due diligence in filing the amendment; (2) the proposed amendment was not required by the voluntary act of the applicant; (3) no modification or addition of issues or parties

will be required by acceptance of the amendment; (4) the proceeding will not be disrupted; (5) the other parties will not be unfairly prejudiced; and (6) the applicant will not gain a comparative advantage. Id., at 824.

5. SEMFOT has failed to meet even one of the six criteria. SEMFOT claims that it meets the first criterion because it filed the amendment within 30 days of the date that the change occurred. SEMFOT states that the removal of Mr. Atkins is prompted by advice of counsel who advised that resignation would be appropriate because of Mr. Atkins' fiduciary duty to the residents of Lubbock. See Petition for Leave to Amend, p. 5, at ¶10. However, SEMFOT fails to acknowledge that the events which prompted counsel's advice, the termination of the settlement agreement between Bakcor and SEMFOT after SEMFOT had raised funds from residents of Lubbock to acquire Station KKIK(FM), occurred over eight months ago, in April 1992. See SEMFOT's Motion to Enlarge Issues. Nowhere does SEMFOT explain why now, eight months later and after its application has been designated for hearing, it is necessary for Mr. Atkins to resign his position. Only by addressing that issue could SEMFOT have shown that it acted with due diligence. As the record stands, it has most assuredly not done so.

6. SEMFOT also has not met the second criterion which requires the applicant to show that the amendment was not

required by the voluntary act of the applicant. SEMFOT's claim that Mr. Atkins' resignation is his voluntary act and not that of the applicant is an attempt to divert attention from what has really occurred. SEMFOT states that Mr. Atkins "has agreed to step down as a principal" of SEMFOT after "[r]ecognizing his fiduciary duty" to the citizens of Lubbock. See Petition for Leave to Amend, p. 5, ¶10. But as SEMFOT readily admits, the applicant is comprised of two other individuals. Nowhere does SEMFOT explain why Mr. Atkins alone bears the duty to resign. The fact that he will sever his ties to SEMFOT, and the other principals will not, supports Bakcor's assertion that Mr. Atkins has been the moving force behind SEMFOT.

7. SEMFOT is incorrect that the acceptance of the amendment will not require the addition of any new issues or parties. SEMFOT states that the removal of Mr. Atkins is related to a change in the applicant from SEMFOT on behalf of itself to SEMFOT on behalf of all the citizens of Lubbock. Certainly this raises a question of who are the real parties in this proceeding; the officers and directors of SEMFOT or the residents of Lubbock. Also, SEMFOT apparently assumes that the removal of Mr. Atkins will obviate the need to explore any issues regarding his character should the motion to enlarge the issues filed by Bakcor be granted. See Petition for Leave to Amend, p. 3, at ¶5. SEMFOT is just plain wrong. The case law is clear that SEMFOT may not be permitted to amend out of any

problems that Mr. Atkins may have before the Commission. Even if the amendment is accepted for Section 1.65 purposes, SEMFOT will be charged with any adverse findings by the Commission concerning Mr. Atkins. TV 9, Inc., 495 F.2d 929 (D.C. Cir. 1973).

8. Moreover, the change for which SEMFOT now seeks post-hoc approval will unfairly prejudice Bakcor and has already disrupted this proceeding. SEMFOT does not state that Mr. Atkins will be made available for depositions or cooperate in discovery. And yet, as the person who certified to the representations in SEMFOT's application, Mr. Atkins is the person most likely to have knowledge of the preparation, filing and prosecution of SEMFOT's application.

9. Finally, although SEMFOT states that it will refrain from objecting to Bakcor's efforts to demonstrate that prior activities of Mr. Atkins bear on the comparative aspect of this proceeding, SEMFOT again does not offer any assurance that Mr. Atkins will cooperate in Bakcor's pursuit of information that may bear on SEMFOT's qualifications. Bakcor's main concern is that SEMFOT not be permitted to block legitimate inquiry into SEMFOT's and Mr. Atkins' qualifications by claiming that Mr. Atkins is no longer a party to the application and need not cooperate. It would be inequitable and unfair to permit SEMFOT, after having stalled Bakcor both at the FCC and the Bankruptcy

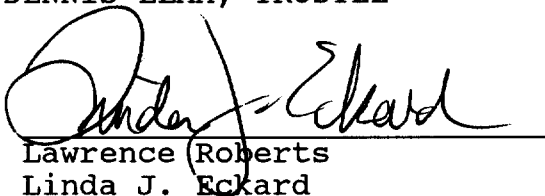
Court for over two years, to avoid scrutiny of its own qualifications. Such scrutiny is a necessary part of any participant in the comparative hearing process. Thus, even if it is appropriate to accept the amendment for Section 1.65 purposes, the amendment should not be accepted for any other purpose. And, in either case, SEMFOT should be instructed that Mr. Atkins must be made available for discovery in this proceeding.

WHEREFORE, Bakcor requests that the petition for leave to amend be DENIED or, alternatively, that the acceptance of the petition be limited to satisfying the requirements of Section 1.65.

Respectfully submitted,

BAKCOR BROADCASTING, INC., DEBTOR,
C/O DENNIS ELAM, TRUSTEE

By:



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Its Counsel

December 15, 1992

CERTIFICATE OF SERVICE

Patricia A. Druliner hereby certifies that she has sent a copy of the foregoing OPPOSITION TO PETITION FOR LEAVE TO AMEND by first class U.S. mail, postage prepaid, or by hand delivery, on this 15th day of November, 1992, to the following:

*Honorable Walter C. Miller
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*By Hand Delivery